



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/168994

PRELIMINARY RECITALS

Pursuant to a petition filed September 23, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 24, 2015, at Oshkosh, Wisconsin. The record was held open for 10 days for the submission of additional evidence by both parties. The agency submitted additional evidence on November 24, 2015. On December 2, 2015, the Petitioner submitted additional evidence. The record closed on December 4, 2015.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$4,074 for the period of July 1, 2014 – May 31, 2015 due to Petitioner's failure to report accurate household members.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jeanie Ortiz

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. On January 7, 2014, the Petitioner contacted the agency and reported that her husband [REDACTED] moved out of the home on December 21, 2013. [REDACTED] was removed from the Petitioner's case. There is no indication that Petitioner reported at that time that [REDACTED]'s income continued to be deposited into her checking account.
3. On February 7, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits for herself and her children. The notice indicated that her benefits were based on no household income. The notice also informed the Petitioner that if her gross monthly household income exceeded \$1,649.17, she must report to the agency by the 10th day of the next month.
4. On April 4, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits for herself and her children. The notice indicated that her benefits were based on gross earned income of \$1,354.50 from Petitioner's job at [REDACTED]. The notice also informed the Petitioner that if her gross monthly household income exceeded \$1,649.17, she must report to the agency by the 10th day of the next month.
5. On April 22, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits for herself and her children. The notice indicated that her benefits were based on gross earned income of \$550.40 from Petitioner's job at [REDACTED]. The notice also informed the Petitioner that if her gross monthly household income exceeded \$1,649.17, she must report to the agency by the 10th day of the next month.
6. On May 2, 2014, the Petitioner completed a SMRF. She reported no changes in household income. She reported no change in her employment at [REDACTED]. She reported new employment at [REDACTED].
7. On May 30, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits for herself and her children. The notice indicated that her benefits were based on gross earned income of \$397.75 from Petitioner's job at [REDACTED]. The notice also informed the Petitioner that if her gross monthly household income exceeded \$1,649.17, she must report to the agency by the 10th day of the next month.
8. On June 12, 2014, the Petitioner completed a CC application. She reported herself and her children in the household.
9. On June 24, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits for herself and her children. The notice indicated that her benefits were based on gross earned income of \$884.30 from Petitioner's job at [REDACTED]. The notice also informed the Petitioner that if her gross monthly household income exceeded \$1,649.17, she must report to the agency by the 10th day of the next month.
10. Petitioner's husband [REDACTED] was incarcerated from July 18, 2014 – October 18, 2014. Petitioner used [REDACTED]'s income to pay household expenses and [REDACTED]'s Huber fees for this period.
11. On August 28, 2014, the Petitioner completed a SMRF. She reported no changes in household composition.
12. On September 16, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits for herself and her children. The notice indicated that her benefits were based on gross earned income of \$2,109 from Petitioner's jobs at [REDACTED] and [REDACTED]. The notice also informed the Petitioner that if her gross monthly household income exceeded \$2,144, she must report to the agency by the 10th day of the next month.

13. On September 24, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits for herself and her children. The notice indicated that her benefits were based on gross earned income of \$1,497.39 from Petitioner's jobs at [REDACTED] and [REDACTED]. The notice also informed the Petitioner that if her gross monthly household income exceeded \$1,649.17, she must report to the agency by the 10th day of the next month.
14. On November 5, 2014, the Petitioner completed a review. No changes in household composition were reported. On November 6, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits for herself and her children. The notice indicated that her benefits were based on no household income. The notice also informed the Petitioner that if her gross monthly household income exceeded \$1,649.17, she must report to the agency by the 10th day of the next month.
15. In March, 2015, the agency received an anonymous tip that [REDACTED] was living with the Petitioner. The agency commenced an investigation.
16. On April 30, 2015, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits for herself and her children. The notice indicated that her benefits were based on gross earned income of \$672 from Petitioner's job at [REDACTED].
17. Petitioner's household income for July, 2014 and November, 2014 – May, 2015 was as follows:

July, 2014	\$3,096.60	November, 2014	\$3,716.19
Dec., 2014	\$3,431.88	January, 2015	\$3,097.76
Feb., 2015	\$3,250.50	March, 2014	\$3,333.23
April, 2015	\$4,979.69	May, 2015	\$4,132.71

The FS program gross income limit for July, 2014 was \$3,926/month for a household of three. The net income limit for July, 2014 was \$1,963/month for a household of three. For the months of November, 2014 – May, 2015, the program gross income limit was \$3,976/month for a household of three. The net income limit for that period was \$1,988/month for a household of three.
18. On September 9, 2015, the agency issued a FS Overpayment Notice and worksheet to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the amount of \$4,074 for the period of July 1, 2014 – May 1, 2015 due to Petitioner's failure to report accurate household members.
19. On September 23, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

In this case, the agency originally established an overpayment based on an anonymous tip and investigation that Petitioner's husband [REDACTED] was residing in the household during 2014 and 2015. After discussions with the Petitioner, the agency conceded that [REDACTED] was not residing in the household from January, 2014 - May, 2015. However, the agency revised the overpayment based on information that, though [REDACTED] was not residing in the household, his earned income was being deposited into the Petitioner's checking account for the household's use. Therefore, the agency based its revised overpayment on the Petitioner's failure to accurately report household income.

According to the Wisconsin FS Handbook, if the income of a non-food unit member is directly deposited into an account jointly owned by a food unit member, it is counted as unearned income for the food group. FS Handbook, § 4.3.1.

The Petitioner does not dispute that [REDACTED]'s income was deposited into her bank account and was available for her use for household expenses. She does dispute the agency's contention that she never reported [REDACTED]'s income as household income. She testified that she reported his income as household income to the agency sometime in the summer of 2014. She testified that she was surprised that the agency did not request verification of his income from her. The Petitioner also testified that not all of the [REDACTED]'s income was available to the household because some of it was used to pay [REDACTED]'s expenses. The only expenses submitted by the Petitioner were [REDACTED]'s Huber fees during the period of July, 2014 – October, 2014.

Based on the evidence provided, I conclude that the agency properly determined that there was an overissuance of FS benefits to the Petitioner based on [REDACTED]'s income not being budgeted in determining the Petitioner's eligibility and allotment for FS benefits. There is insufficient evidence presented by the Petitioner that she reported [REDACTED]'s income as available to the household. The case notes contain no indication of such report. I am taking judicial notice of Notices of Decision issued by the agency to the Petitioner. The notices clearly informed the Petitioner that only her earned income was being considered by the agency. The notices also informed the Petitioner of the requirement to report if the household's income exceeded a certain level and there is no indication that Petitioner ever contacted the agency to report that her household income exceeded that reporting requirement. Therefore, I find the overissuance of FS benefits was a client error in not reporting [REDACTED]'s income being deposited into her account.

The Petitioner did not present evidence to rebut the agency's evidence that all of [REDACTED]'s income was available to the household. The only portion of [REDACTED]'s income that could possibly be found not to be available to the Petitioner was \$240 in Huber fees paid in July, 2014. However, even if Petitioner's household income was reduced by \$240, the household income in July, 2014 still exceeded the program limits. The remaining receipts produced by the Petitioner for Huber fees were for the months of August – October, 2014. The agency is not seeking to recovery FS benefits for those months so that evidence is not relevant.

I reviewed the agency's calculations regarding the overpayment and find that the agency accurately determined that the household was not eligible for FS benefits in July, 2014 and November, 2014 – May, 2015 based on income exceeding program limits. I note that the household income was under the gross income limit; however, it was over the net income limit in each month. Therefore, the agency properly seeks a total recovery of FS benefits in the amount of \$4,074 issued to the Petitioner in July, 2014 and November, 2014 – May, 2015.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of FS benefits in the amount of \$4,074 from the Petitioner for the months of July, 2014 and November, 2014 – May, 2015.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

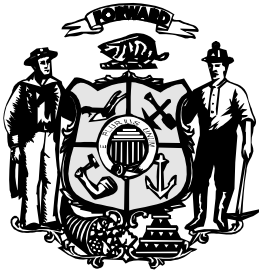
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of December, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 14, 2015.

Winnebago County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability